Architectural Exteriors, Inc. and its alter egos/single employer/successors Architectural Exterior Designs, Inc. and Architectural Exteriors Finishers, Inc., additional Respondents responsible for the purpose of achieving compliance with the terms of the Board's Order and their alter ego Robert Mantua, additional Respondent responsible for the purpose of achieving compliance with the terms of the Board's Order *and* Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO. Case 7–CA–31699

June 26, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On February 17, 1993, the National Labor Relations Board issued an unpublished Decision and Order, inter alia, ordering Architectural Exteriors, Inc. (the Respondent) to take certain actions, including making contractually required fringe benefit payments to the fringe benefit funds of Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO (Local 67) in the amount of $28,500. The Board's Decision and Order was issued pursuant to a settlement stipulation between the Respondent, Local 67, and the General Counsel, executed on October 9, 1992. On March 30, 1993, the United States Court of Appeals for the Sixth Circuit issued a judgment enforcing the Board's Order.

A controversy having arisen as to the liability of Respondents Architectural Exterior Designs, Inc. (Architectural Designs), Architectural Exterior Finishers, Inc. (Architectural Finishers), and Robert Mantua (collectively the Respondents) for judgment against the Respondent and to the amounts due the Local 67 Fringe Benefit Funds on behalf of the affected employees, on March 24, 1995, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.

By letter dated April 18, 1995, the Region advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer were filed by May 5, 1995, summary judgment would be sought. The Respondents filed no answer.

On May 17, 1995, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On May 19, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

> If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

At all material times, Robert Mantua has been the incorporator, sole owner, and president and the sole officer of the Respondent.

Architectural Designs was incorporated on or about December 10, 1990. At all material times, Robert Mantua has been the incorporator, sole owner, and president and the sole officer of Architectural Designs. About the summer of 1991, Robert Mantua caused the Respondent to become inactive and caused Architectural Designs to acquire/take over and continue to operate the business of the Respondent in essentially unchanged form as a disguised continuance of the Respondent.

Architectural Finishers was incorporated on or about April 3, 1992. At all material times, Robert Mantua has been the incorporator, sole owner, and president

and the sole officer of Architectural Finishers. About midsummer 1992, Robert Mantua caused Architectural Designs to become inactive and caused Architectural Finishers to acquire/take over and continue to operate the business of Architectural Designs in essentially unchanged form as a disguised continuance of Architectural Designs.

At all material times, the Respondent, Architectural Designs, and Architectural Finishers have been business enterprises sharing common ownership, common officer(s), common management and supervision, common business purpose and operation, overlapping common premises and facilities, interchange of personnel, common labor relations policies, and have variously held themselves out to the public as a single enterprise.

CONCLUSIONS OF LAW

The Respondent, Architectural Designs, and Architectural Finishers are alter egos and a single employer within the meaning of the Act and are liable, jointly and severally, to remedy the unfair labor practices of the Respondent by making whole the Local 67 fringe benefit funds as set forth herein. Architectural Designs continued as the employing entity with notice of the potential liability of the Respondent to remedy its unfair labor practices and is a successor to the Respondent. Architectural Finishers continued as the employing entity with notice of the potential liability of the Respondent to remedy its unfair labor practices and the potential liability of Architectural Designs as a successor to the Respondent and is a successor to the Respondent and Architectural Designs. At all material times, Robert Mantua has been the sole incorporator, owner, officer, and manager formulating and executing labor relations and operation policies of the Respondent, Architectural Designs, and Architectural Finishers, and has been the disguised continuance of the Respondent, Architectural Designs, and Architectural Finishers and has operated those entities with undercapitalization, dissipated corporate assets, and/or intermingled personal and corporate assets and affairs, and has taken the above actions in order to attempt to enable the Respondent to evade its liability. Robert Mantua is an employer within the meaning of Section 2(2) of the Act and is an alter ego of the Respondent and is liable, jointly and severally, to remedy the unfair labor practices of the Respondent and thus liable to make whole the Local 67 fringe benefit funds as set forth in the Board's Order as enforced by the United States Court of Appeals for the Sixth Circuit. Based on the above conduct, it is appropriate to pierce the corporate veil to hold Robert Mantua personally liable to remedy the unfair labor practices of the Respondent and thus liable to make whole the Local 67 fringe benefit funds as set forth in the Board's Order as enforced by the United States Court of Appeals for the Sixth Circuit.

Accordingly, we conclude that the following amounts due the Local 67 fringe benefit funds on behalf of the affected employees is as stated in the compliance specification, and we will order payment by the Respondents of the amounts, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, Architectural Exterior Designs, Inc. and Architectural Exterior Finishers, Inc., and their alter ego, Robert Mantua, Redford and Northville, Michigan, their officers, agents, successors, and assigns, shall pay the amounts stated below, minus $95.68, plus interest:[1]

Insurance	*Pension*	*Vacation*	*Apprentice-ship*	*Industry Promotion*
$11,148.21	$9,735.65	$6,960.64	$285.00	$370.50

Dated, Washington, D.C. June 26, 1995

Margaret A. Browning, Member

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] On March 6, 1995, by Order of the United States District Court for the Eastern District of Michigan, the outstanding amount of fringe benefits contributions owed by the Respondent was reduced by $95.68 to a net liability of $28,404.32.